

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI

**v.
VINCENT KEITH MINNER**

RESPONDENT,

APPELLANT.

DOCKET NUMBER WD70338
DATE: March 9, 2010

Appeal From:

Boone County Circuit Court
The Honorable Sanford F. Conley IV, Judge

Appellate Judges:

Division Four: Thomas H. Newton, Chief Judge, Russell E. Steele, Special Judge, and
Cynthia L. Martin, Judge

Attorneys:

Shaun J. Mackelprang and Daniel N. McPherson, Jefferson City, MO, for respondent.

Kent Denzel, Columbia, MO, for appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI,

RESPONDENT,

v.

VINCENT KEITH MINNER,

APPELLANT.

No. WD70338

Boone County

Before Division Four Judges: Thomas H. Newton, Chief Judge, Russell E. Steele, Special Judge, and Cynthia L. Martin, Judge

Vincent Minner appeals the trial court's judgment convicting him of first degree murder, first degree assault, first degree burglary, and two counts of armed criminal action after a jury trial. Minner claims the trial court erred in permitting an officer to testify to statements made at the scene of the crime by the murder victim, which implicated Minner, as a dying declaration. Minner claims the victim's statement did not qualify as a dying declaration and, in any event, violated his constitutional right to confront witnesses. Minner also claims the jury could not have found beyond a reasonable doubt that the murder victim died as a result of the gunshot wounds inflicted by Minner or that Minner acted with deliberation. Finally, Minner alleges the trial court committed plain error in failing to intercede when the State in closing argument characterized a statement made by Minner's counsel during closing argument as deception.

AFFIRMED.

Division Four holds:

The trial court's admission of the officer's testimony concerning the victim's statement was not an abuse of discretion. The officer's testimony indicated the victim subjectively believed that his death was imminent and that there was no hope of recovery. Minner did not preserve his constitutional objection to admission of victim's dying declaration, requiring plain error review. Minner failed to establish that allowing the officer to testify about victim's dying declaration violated Minner's constitutional right to confront witnesses pursuant to the Confrontation Clause and, thus, did not establish substantial grounds to find that manifest injustice resulted.

The jury reasonably concluded that Minner caused the victim's death despite competing medical testimony on the subject of the cause of death.

The evidence was sufficient to support the jury's conclusion that Minner acted with deliberation. Testimony established that Minner had previous confrontations with the victim, that Minner showed up at the victim's home with a gun, that Minner fired shots through the victim's front door after the victim has asked who was knocking on his door, that Minner broke

through the door and confronted the injured victim, and that Minner fought with the victim and shot him two more times.

The statements during the State's closing argument about which Minner complains were comments on the tactics and techniques of Minner's counsel and were, therefore, permissible. There was no plain error. Even if the State's comments had been improper, we would be unable to conclude that the comments had a decisive effect on the outcome of the trial as to amount to manifest injustice given the overwhelming evidence of Minner's guilt.

Opinion by: Cynthia L. Martin, Judge

March 9, 2010

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